IN THE HIGH COURT OF JUDICATURE AT BOMBAY
APPELLATE JURISDICTION

CRIMINAL APPLICATION NO. 2056 OF 2006

The State of Maharashtra ..Applicant

Vs.

Mr. Kailash Mannalal Jindal and ors. ..Respondents

Mr. P.A. Pol, APP for applicant-State.
Mr. Murlidharan V.C. for respondent nos.2 to 4.

**CORAM: B.H. MARLAPALLE, J.**

**Date : September 26, 2007.**

**P.C.:**

1. Heard Mr. Pol, the learned AP. This is an application seeking leave to appeal under Section 378(3) of Cr.P.C. against the order of acquittal passed by the learned Chief Judicial Magistrate, Sangli in Criminal Case No. 126 of 1996. The said case was instituted on the basis of the complaint filed by Shri D.S. Chavan, Food and Drug Administration at Sangli under the Drugs and Cosmetics Act, 1940. Accused nos.1 to 5 were the Directors of the Company which manufactures the Drug "Framycetin Skin Cream i.e. Septamicin Skin Cream" and accused

no.9 was the manufacturer Company M/s.Dujohn Laboratories Ltd., Indore. Accused No.6 to 8 were the approved expert chemists of the accused no.9 - company. The trial court noted that though the samples of the drug were drawn from the premises of M/s. S.V. Medicals, Mallikarjun Sadan, Zaribag, Miraj, the distributor/agent was not made a party and all other accused were impleaded were not located within the territorial limits of the learned Chief Judicial Magistrate at Sangli. For these reasons the complaint was dismissed by holding that the court had no jurisdiction to entertain the same, unless the local vendor/agent was impleaded as an accused.

2. Mr. Pol has drawn my attention to the scheme of Section 19 of the Drugs and Cosmetics Act, 1940 and more particularly Subsection 3 therein. In fact, Subsection 3 of Section 19 of the Drugs and Cosmetics Act, 1940 sets out the defences that may be available to a person not being the manufacturer of a drug or cosmetic or his agent and obviously if the local distributor/vendor was joined as a party he could take any of these three defences as set out under

Subsection 3 of Section 19 but that does not mean that the complaint could be proceeded further without the vendor being impleaded as an accused. None of the accused before the trial court was located within its territorial jurisdiction and the complaint was, therefore, rightly dismissed.

3. Hence, leave to appeal is refused and the application is rejected.

**(B.H. Marlapalle,J.)**